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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/690,713	10/22/2003	Timothy C. Thompson	PRO025/4-9CON2US	9759
21586 7590 06/18/2008 VINSON & ELKINS, L.L.P. FIRST CITY TOWER 1001 FANNIN STREET, SUITE 2500 HOUSTON, TX 77002-6760				
EXAMINER YAO, LEI				
ART UNIT 1642		PAPER NUMBER		
NOTIFICATION DATE 06/18/2008		DELIVERY MODE ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

cporter@velaw.com  
IPTLDocket@velaw.com  
bmelder@velaw.com

**Advisory Action  
Before the Filing of an Appeal Brief**

**Application No.**

10/690,713

**Applicant(s)**

THOMPSON, TIMOTHY C.

**Examiner**

LEI YAO

**Art Unit**

1642

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 05 May 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 2 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☒ The Notice of Appeal was filed on 05 May 2008. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 26-31, 33 and 35-39.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

/Larry R. Helms/  
Supervisory Patent Examiner, Art Unit 1643

Continuation of 11, does NOT place the application in condition for allowance because: Applicant's argument in the reply to the Final Office action dated 12/4/2007 is full considered, but is deemed not to be persuasive to overcome the rejection. For example, Applicant argues: "Monoclonal antibodies are increasingly recognized as important agents for the treatment of cancer". Applicant also cites two references teaching the cancer treatment by antibody (page 3). In response, treating a particular cancer with an antibody for a particular antigen involved in the cancer condition is acknowledged in the art. However, this does not suggest that skilled in the art could use an antibody to any antigen to treat any or a particular cancer. In this case, using antibody to CD20 or HER-2 etc. to treat a cancer disclosed in the art does not teach or suggest that one could use anti-caveolin to treat prostate cancer as claimed because treating cancer with antibody is unpredictable, which would require undue a quantity of experimentations before one skilled in the art could practice it, which has been explicitly discussed in the rejection.

Applicant also provides a reference by inventor self teaching caveolin-1 promoting angiogenesis that is involved in the prostate cancer development. However, whether antibody to caveolin-1 could be effective on the treatment of a patient with prostate cancer has not been determined or provided in the reference. As such, again, undue experimentations would be necessary because 1) the tumor growth in vivo does not dependent on only the tumor angiogenesis or vasculization because the prior art by Nelson et al., (provided in the rejection) has suggested the growth of caveolin-1 depleted tumor is still progressed although it is less than control tumor and 2) the inventor's article and instant application do not provide objective evidence showing depletion of tumor secreted caveolin-1 by antibody could directly inhibit tumor growth either in the animal or even in the culture cells. Thus, the argument presented by applicant is not persuasive and rejection is maintained for reason of the record.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lei Yao, Ph.D. whose telephone number is 571-272-3112. The examiner can normally be reached on 8am-6.00pm Monday-Thursday.

Any inquiry of a general nature, matching or file papers or relating to the status of this application or proceeding should be directed to Kim Downing for Art Unit 1642 whose telephone number is 571-272-0521

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Larry Helms can be reached on 571-272-0832. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).